FINANCIAL HARDSHIP UNLOCKING

2015 USER GUIDE FOR OWNERS (Applicants)

FORM FHU 3 – FIRST AND LAST MONTHS' RENT FOR A PRINCIPAL RESIDENCE

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INTRODUCTION AND OVERVIEW

This User Guide is intended to assist owners of locked-in accounts who wish to apply to withdraw money from locked-in accounts because of financial hardship, in accordance with the requirements of Regulation 909, R.R.O. 1990, under the Ontario *Pension Benefits Act*.

Please note that this User Guide is a guideline only. It is meant to provide guidance to individuals who are filling out applications. Where this guideline conflicts with the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (FSCO Act), the *Pension Benefits Act* R.S.O. 1990, c. P.8. or Regulation 909, R.R.O. 1990 (Regulation), the FSCO Act, Pension Benefits Act or Regulation govern.

There are four categories of financial hardship:

(i) medical expenses;
(ii) arrears of rent or debt secured on a principal residence (such as a mortgage);
(iii) payment of first and last months' rent; and
(iv) low expected income.

This User Guide is only for category (iii) first and last months' rent for a principal residence. If you want to make an application during this year under one of the other categories, you must make a separate application. For applications under other categories, please refer to the appropriate User Guide on the FSCO website.

Effective January 1, 2014, all applications for financial hardship withdrawals must be made to the financial institution which holds and administers your locked-in account. A financial institution may be one of the following institutions:

- bank
- life insurance company
- credit union
- caisse populaire
- trust company

If you have invested the money in your locked-in account through a financial advisor, you should ask your advisor if you should make your application through him/her, or directly to the financial institution that holds your locked-in account.

You cannot make your application to the Financial Services Commission of Ontario (FSCO). FSCO no longer has the authority to process these applications.

Your financial institution is responsible for answering questions and providing information to you regarding your application.

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MAIN REQUIREMENTS FOR APPLYING FOR FINANCIAL HARDSHIP UNLOCKING

Money must be in a locked-in account and you must be the owner

There are three different types of locked-in accounts:

(i) Locked-in retirement accounts (LIRAs).
(ii) Life income funds (LIFs). There are two kinds of LIFs: Old LIFs and "New LIFs"
(iii) Locked-in retirement funds (LRIFs).

To apply for financial hardship withdrawal, **your money must be in one of these accounts.** If your money is still in your pension plan, **you cannot apply to withdraw money on the basis of financial hardship.**

You must be the owner of the locked-in account to apply for financial hardship. The locked-in account must be in your name, not in your spouse's name. If you are not sure whether you are the owner of the account, ask your financial institution or financial advisor.

Money must be subject to the Pension Benefits Act

The money in your locked-in account must be subject to Ontario pension law, not federal pension law or the pension law of another province. If the money is not subject to Ontario pension law, the financial institution must refuse your application. If you are not sure whether the money in your locked-in account is subject to Ontario pension law, ask your financial institution.

The application form

You must apply on the forms approved by the Superintendent of Financial Services. The application for first and last months' rent for a principal residence must be made on **Form FHU 3** for the year in which you are applying.

Forms and other information about financial hardship unlocking may be accessed on FSCO's website. You may also contact FSCO and request an application form, or you may pick up an application form from FSCO's office. You may also ask your financial institution for an application form.

If an application is signed in 2015, the 2015 form must be used. You cannot use a previous year's form.

One application per year, per category, per account

You may only make one application from your locked-in account each calendar year under the first and last months' rent for a principal residence category.

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The key date is the date your financial institution receives your complete application, along with any required accompanying documents. This could be the date the completed application is submitted in person, or the date it is received by mail, fax or electronically.

Deadlines and timelines

There are a number of important deadlines and timelines which must be met:

(i) 60 day time limit for submitting the application

Once you sign the application (and your spouse signs the consent, if applicable), you have 60 days to submit it to the financial institution. If you submit it after 60 days from the date you signed it, you will have to fill out another application.

(ii) 30 day time limit for payment by financial institutions

The financial institution must review the application and determine if it meets the requirements in the Regulation for the first and last months' rent for a principal residence category of financial hardship. If the requirements are met, the financial institution must approve the application and make the payment within 30 days from the day it received the completed application.

Minimum and maximum amounts you may apply for

For all applications, the **minimum** amount you can apply for is $500.00. If you apply for less than $500.00, the application must be refused.

The maximum amount for the first and last months' rent for a principal residence category is described on pages 7-8. You cannot apply for an amount greater than the maximum amount to which you are entitled; if you do apply for an amount greater than the maximum, the financial institution should advise you to amend the application.

A financial institution is not permitted under the Regulation to pay an amount greater than the maximum the owner is entitled to.

Please refer to the section below (Part 2, question 2) for more information about the maximum amount you may withdraw for first and last months' rent for a principal residence.

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WHEN YOUR APPLICATION IS APPROVED

Payment

The money must be paid in one lump sum. It cannot be paid monthly or in any other manner. It cannot be transferred to another tax-deferred account, such as a registered retirement savings plan or a registered retirement income fund.

Withholding tax and other deductions

The amount you are approved for will be reduced by an amount withheld for income tax. This is because when money is paid out of an unlocked account, financial institutions are required to withhold a certain amount of money for income tax and pay that amount to the Canada Revenue Agency (CRA).

In addition, your financial institution may charge an administrative fee for your application, which will be deducted from the amount that was approved for you.

For example, if you apply and are approved for a withdrawal of $20,000.00, the financial institution must withhold approximately 30 percent of that amount, which is $6,000.00, for income tax and pay it to CRA. If the financial institution charges you a $50.00 fee, that amount will also be deducted. Therefore, you will receive $13,950.00.

If you want to receive a greater amount in cash than what you would have received after deductions, you should apply to withdraw a greater amount. **But you cannot apply to withdraw an amount greater than the maximum to which you are entitled under the Regulation or greater than the amount in your account.**

Entitlement to other government benefits

When you withdraw money from a locked-in account, that amount could be considered as income. This could affect your eligibility for benefits under a government program, such as social assistance. If you have a question as to whether this could apply to you, you should contact the government agency or department that administers the program or provides these benefits.

Loss of creditor protection

Money in locked-in accounts cannot be seized by creditors. However, if you withdraw money from a locked-in account for financial hardship, it will no longer be protected from creditors and may be seized.

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Privacy

The financial institution must advise each owner about the purpose for which personal information is collected, used or disclosed in accordance with any applicable law.

FILLING OUT FHU FORM 3 – FIRST AND LAST MONTHS' RENT FOR A PRINCIPAL RESIDENCE

General Information about Form 3

Under this category, you may make one application during a calendar year to pay first and last months' rent for your principal residence.

The residence that is being rented must be intended to be occupied by the owner as his or her principal residence (primary place of residence). Either the owner or the owner's spouse may be the person who requires the money to pay first and last months' rent (i.e., whose name is or will be on the lease).

> Example: Michael owns a locked-in account. Michael's wife, Kay, seeks to rent a house that will be the principal residence for both of them. Kay arranges the lease and it will be in her name. Michael's application should qualify because the house will be Michael's principal residence.

An application is considered to have been made in the year in which the financial institution receives the completed application.

You may make more than one application for a withdrawal from the same locked-in account under different categories of financial hardship in the same year but you must use different forms.

Part 1 – Information about yourself and your locked-in account

Question 1: Fill in the information about yourself in each box.

Question 2: Fill in the name of the financial institution that holds your locked-in account (for example, the name of the bank, insurance company, credit union) and the number of the account. The only number in the box should be the number of the account from which you wish to withdraw money.

Information about your spouse

Question 3: If you have a spouse **on the date you sign this application**, fill in the information about your spouse in each box.

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"Spouse" is defined in the Pension Benefits Act as either of two persons who,

(i) are married to each other; or

(ii) are not married to each other and are living together in a conjugal relationship, either:

   a. continuously for a period of not less than three years; or

   b. in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the *Family Law Act*.

If you have a spouse and you are living separate and apart from your spouse due to a breakdown in your spousal relationship, your spouse is not required to consent to the withdrawal. However, you must still fill in the required information about your spouse in question 3.

Just because you and your spouse are living in different residences on the date the application is signed does not automatically mean you are not spouses for the purpose of this application. Your living separate and apart must be because there has been a breakdown in the spousal relationship. If one spouse is living elsewhere because of his/her work, or because he/she is looking after a relative or friend, or for health reasons, or for other reasons that are not related to their spousal relationship, it does not mean you are living separate and apart for the purpose of this application.

It is possible that you may have "more than one spouse". That is, you may be separated from your wife or husband although you are still married, but you may be living common law with another person who meets the definition of spouse in the Pension Benefits Act. In this case, you should fill in the information about the spouse with whom you are living when you apply – in this example, your common law spouse. The money can only be withdrawn if that person provides his or her consent (see Part 4).

Part 2 – First and last months' rent for a principal residence

Question 1: **Other than this application, have you applied to withdraw money from this locked-in account based on the need for first and last months' rent for a principal residence at any time during 2015?** If you answered 'yes', you cannot apply again under this category this year.

Question 2: **What is the maximum amount you may withdraw?**

The maximum amount you may withdraw is the smaller of the amounts entered in boxes 2a and 2b.

The amount in **box 2a for 2015 is $2,680**.

In **box 2b**, fill in the total amount required for the first and last months' rent for a principal residence.

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Enter the smaller amount in **box 2c.** This is the maximum amount that you may apply to withdraw under this category.

Question 3: **How much money are you applying to withdraw from this locked-in account?**

You do not have to apply for the maximum amount you are entitled to.

You cannot apply for an amount that is:

- greater than the amount in your locked-in account as of the date you sign this application;
- greater than the maximum amount you are allowed to withdraw (box 2c); or
- less than $500.00.

Remember that the amount you apply for will be reduced by withholding tax and may be reduced further by an administrative fee.

Question 4: **What is the address of the principal residence you and your spouse (if applicable) want to rent?**

Fill in the information about the residence you want to rent.

Additional documents:

If you have a copy of the rental agreement, include it with your application. However, your application can be processed if there is no rental agreement. A financial institution cannot require you to provide a rental agreement.

Part 3 – Certification by the owner of the locked-in account

You must sign and date the certification in Part 3 in the presence of an adult witness, who must be 18 years of age or older. The witness cannot be your spouse or dependant. An employee of your financial institution may be a witness.

Once the application is signed, you have 60 days to submit it to the financial institution.

Certifications regarding spousal status

You must certify certain information regarding your spousal status on the date you sign the application. In Part 3, you must check only one of four boxes:

(i) You have a spouse and your spouse consents to the withdrawal of money from the locked-in account. (If you check this box, you will need your spouse to complete Part 4.)

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(ii) You have a spouse but you and your spouse are living separate and apart as a result of a breakdown in your spousal relationship.

(iii) You have a spouse, but "none of the money in your locked-in account is derived, directly or indirectly, from a pension benefit provided in respect of your past or current employment".

This refers to a situation where you are seeking to withdraw money from a locked in account, and this money did not come from your pension but from someone else's pension plan, such as your former spouse.

For example, as a result of a divorce, John was required to pay a portion of his pension to Jane and the money was paid into Jane's locked-in account. Jane subsequently married Bob and now wants to apply to withdraw money from her locked-in account for financial hardship. Since the money was earned by John, Jane's current spouse Bob is not required to consent to the application. John is no longer Jane's spouse, so his consent is no longer required.

(iv) You do not have a spouse.

Other certifications

By signing the application, you are also certifying that:

- all the information in the application and any accompanying documents is accurate and complete; and
- you have not previously applied to withdraw money for first and last months' rent for a principal residence in this calendar year from this locked-in account.

Part 4 – Consent of the owner's spouse to the withdrawal

If you have a spouse on the day you sign the certification, you may only withdraw money from your locked-in account if your spouse consents to the application. Your spouse's consent is not required if:

- you and your spouse are living separate and apart as a result of a breakdown in your spousal relationship; or

- the money in your locked-in account came from the pension plan of another person, such as your former spouse.

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If your spouse wishes to consent, your spouse must fill in Part 4 and sign and date it in the presence of a witness who is at least 18 years of age. The witness must also sign Part 4. An employee of the financial institution may be the witness. The owner of the locked-in account cannot be the witness.

If your spouse is not sure about the legal consequences of signing the consent, he or she should seek legal advice. Your spouse is under no obligation to sign. But if spousal consent is required and your spouse does not consent, the financial institution must refuse your application.

Your spouse must indicate that he or she understands that:

(i) the owner is making an application to withdraw money from the locked-in account, and that the owner cannot withdraw the money from the locked-in account without your spouse's consent;

(ii) as long as this money is in the locked-in account, your spouse may have a right to a share of this money if there is a breakdown in your spousal relationship or if you die; and

(iii) if any money is withdrawn from the locked-in account, your spouse may lose any right that he or she has to a share of the money withdrawn.

If the financial institution is not satisfied that the spouse understands what he or she is signing, it may refuse the application. The financial institution may request proof of the spouse's identity and spousal status.

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